

APR 01 2011

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

MARK TODD SHOWALTER,
Petitioner,

v.

HON. HUMES J. FRANKLIN, et al.,
Respondents.

) Civil Action No. 7:11cv00144
)
)
)
)


MEMORANDUM OPINION

) By: Samuel G. Wilson
) United States District Judge
)

This matter is before the court upon Mark Todd Showalter's "motion for an extension of time" which was docketed as a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254. However, Showalter raises no substantive § 2254 claims in his motion, and, therefore, the court lacks jurisdiction to consider it. Accordingly, the court dismisses this action without prejudice.

Federal courts lack jurisdiction to consider the timeliness of a § 2254 petition until it is actually filed. Gregory v. Bassett, No. 3:07cv00790, 2009 U.S. Dist. LEXIS 13766, 2009 WL 455267, at *2 (E.D. Va. Feb. 23, 2009); see also United States v. White, 257 F. App'x 608, 609 (4th Cir. 2007) (holding that no case or controversy existed before § 2255 motion was actually filed); United States v. Leon, 203 F.3d 162, 164 (2d Cir. 2000) (holding that no case or controversy existed before § 2255 motion was actually filed). Because a § 2254 petition did not accompany Showalter's motion for an extension of time and because the motion did not contain any statement of his claims for habeas relief or indicate the judgment he seeks to challenge, Showalter's motion for an extension of time will be denied and this action is dismissed without prejudice. See Ramirez v. United States, 461 F. Supp. 2d 439, 440-41 (E.D. Va. 2006) (citing cases).

ENTER: This 1st day of April, 2011.



United States District Judge